

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation )  
Against: )**

**GERALD DAVID EBNER, M.D. )**

**Case No. 8002016019947**

**Physician's and Surgeon's )  
Certificate No. G25834 )**

**Respondent )**

**DECISION**

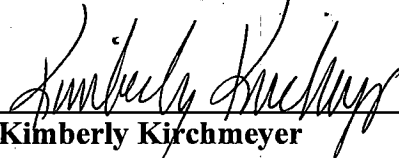
**The attached Stipulated Surrender of License and Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on AUGUST 22, 2017**

**IT IS SO ORDERED AUGUST 15, 2017.**

**MEDICAL BOARD OF CALIFORNIA**

**By:**



**Kimberly Kirchmeyer  
Executive Director**

1 XAVIER BECERRA  
Attorney General of California  
2 E. A. JONES III  
Supervising Deputy Attorney General  
3 CLAUDIA RAMIREZ  
Deputy Attorney General  
4 State Bar No. 205340  
California Department of Justice  
5 300 South Spring Street, Suite 1702  
Los Angeles, California 90013  
6 Telephone: (213) 897-5678  
Facsimile: (213) 897-9395  
7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2016-019947

13 GERALD DAVID EBNER, M.D.  
1418 E. Main Street, Suite 210  
Santa Maria, California 93454

12 **STIPULATED SURRENDER OF**  
13 **LICENSE AND ORDER**

14 Physician's and Surgeon's Certificate  
15 No. G 25834,

16 Respondent.

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical  
21 Board of California ("Board"). She brought this action solely in her official capacity and is  
22 represented in this matter by Xavier Becerra, Attorney General of the State of California, by  
23 Claudia Ramirez, Deputy Attorney General.

24 2. Gerald David Ebner, M.D. ("Respondent") is represented in this proceeding by  
25 attorney Catherine J. Swysen, Esq. whose address is 125 East De La Guerra, Suite 102, Santa  
26 Barbara, California, 93101-2276.

27 3. On or about October 15, 1973, the Board issued Physician's and Surgeon's Certificate  
28 No. G 25834 to Respondent. That Certificate was in full force and effect at all times relevant to

1 the charges brought in Accusation No. 800-2016-019947 and will expire on December 31, 2017,  
2 unless renewed.

### 3 JURISDICTION

4 4. Accusation No. 800-2016-019947 was filed before the Board and is currently pending  
5 against Respondent. The Accusation and all other statutorily required documents were properly  
6 served on Respondent on February 28, 2017. Respondent timely filed his Notice of Defense  
7 contesting the Accusation. A copy of Accusation No. 800-2016-019947 is attached as Exhibit A  
8 and incorporated by reference.

### 9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, fully discussed with counsel, and understands the  
11 charges and allegations in Accusation No. 800-2016-019947. Respondent also has carefully read,  
12 fully discussed with counsel, and understands the effects of this Stipulated Surrender of License  
13 and Order.

14 6. Respondent is fully aware of his legal rights in this matter, including the right to a  
15 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine  
16 the witnesses against him; the right to present evidence and to testify on his own behalf; the right  
17 to the issuance of subpoenas to compel the attendance of witnesses and the production of  
18 documents; the right to reconsideration and court review of an adverse decision; and all other  
19 rights accorded by the California Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
21 every right set forth above.

### 22 CULPABILITY

23 8. Respondent does not contest that, at an administrative hearing, Complainant could  
24 establish a prima facie case with respect to the charges and allegations contained in Accusation  
25 No. 800-2016-019947 and that he has thereby subjected his license to disciplinary action.

26 9. Respondent agrees that if he ever petitions for reinstatement of his Physician's and  
27 Surgeon's Certificate No. G 25834, all of the charges and allegations contained in Accusation No.  
28 800-2016-019947 shall be deemed true, correct and fully admitted by Respondent for purposes of

1 that reinstatement proceeding or any other licensing proceeding involving Respondent in the State  
2 of California.

3 10. Respondent understands that by signing this stipulation he enables the Board to issue  
4 an order accepting the surrender of his Physician's and Surgeon's Certificate without further  
5 process.

6 CONTINGENCY

7 11. This stipulation shall be subject to approval by the Board. Respondent understands  
8 and agrees that counsel for Complainant and the staff of the Board may communicate directly  
9 with the Board regarding this stipulation and surrender, without notice to or participation by  
10 Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he  
11 may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board  
12 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,  
13 the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this  
14 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not  
15 be disqualified from further action by having considered this matter.

16 12. The parties understand and agree that Portable Document Format (PDF) and facsimile  
17 copies of this Stipulated Surrender of License and Order, including Portable Document Format  
18 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

19 13. In consideration of the foregoing admissions and stipulations, the parties agree that  
20 the Board may, without further notice or formal proceeding, issue and enter the following Order:

21 ORDER

22 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 25834, issued  
23 to Respondent Gerald David Ebner, M.D., is surrendered and accepted by the Medical Board of  
24 California.

25 1. The surrender of Respondent's Physician's and Surgeon's Certificate and the  
26 acceptance of the surrendered license by the Board shall constitute the imposition of discipline  
27 against Respondent. This stipulation constitutes a record of the discipline and shall become a part  
28 of Respondent's license history with the Medical Board of California.

2. Respondent shall lose all rights and privileges as a Physician and Surgeon in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his wall certificate and, if one was issued, pocket license on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 800-2016-019947 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 800-2016-019947 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

#### ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Catherine J. Swysen, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED:

May 31, 2017

Gerald David Ebner, MD.

GERALD DAVID EBNER, M.D.  
Respondent

1 I have read and fully discussed with Respondent Gerald David Ebner, M.D. the terms and  
2 conditions and other matters contained in this Stipulated Surrender of License and Order. I  
3 approve its form and content.  
4  
5  
6

7 DATED: June 8, 2017

Catherine J. Swysen  
8 CATHERINE J. SWYSEN  
9 Attorney for Respondent

10 ENDORSEMENT

11 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted  
12 for consideration by the Medical Board of California of the Department of Consumer Affairs.

13 Dated: 6/21/17

Respectfully submitted,

14 XAVIER BECERRA  
15 Attorney General of California  
16 E. A. JONES III  
17 Supervising Deputy Attorney General

Claudia Ramirez  
18 CLAUDIA RAMIREZ  
19 Deputy Attorney General  
20 Attorneys for Complainant

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**Exhibit A**

**Accusation No. 800-2016-019947**

1 XAVIER BECERRA  
Attorney General of California  
2 E. A. JONES III  
Supervising Deputy Attorney General  
3 CLAUDIA RAMIREZ  
Deputy Attorney General  
4 State Bar No. 205340  
California Department of Justice  
5 300 South Spring Street, Suite 1702  
Los Angeles, California 90013  
6 Telephone: (213) 897-5678  
Facsimile: (213) 897-9395  
7 Attorneys for Complainant

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO Feb. 28 20 17  
BY [Signature] ANALYST

8 BEFORE THE  
9 MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 800-2016-019947

12 GERALD DAVID EBNER, M.D.  
1418 E. Main Street, Suite 210  
13 Santa Maria, California 93454

ACCUSATION

14 Physician's and Surgeon's Certificate  
No. G 25834,

15  
16 Respondent.

17  
18 Complainant alleges:

19 PARTIES

20 1. Kimberly Kirchmeyer ("Complainant") brings this Accusation solely in her official  
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer  
22 Affairs ("Board").

23 2. On or about October 15, 1973, the Board issued Physician's and Surgeon's Certificate  
24 Number G 25834 to Gerald David Ebner, M.D. ("Respondent"). That certificate was in full force  
25 and effect at all times relevant to the charges brought herein and will expire on December 31,  
26 2017, unless renewed.

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28 ///



## JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

5. Section 2234 of the Code states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

1 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the  
2 violation of, or conspiring to violate any provision of this chapter.

3 “(b) Gross negligence.

4 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or  
5 omissions. An initial negligent act or omission followed by a separate and distinct departure from  
6 the applicable standard of care shall constitute repeated negligent acts.

7 “(1) An initial negligent diagnosis followed by an act or omission medically appropriate  
8 for that negligent diagnosis of the patient shall constitute a single negligent act.

9 “(2) When the standard of care requires a change in the diagnosis, act, or omission that  
10 constitutes the negligent act described in paragraph (1), including, but not limited to, a  
11 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the  
12 applicable standard of care, each departure constitutes a separate and distinct breach of the  
13 standard of care.

14 “(d) Incompetence.

15 “(e) The commission of any act involving dishonesty or corruption which is substantially  
16 related to the qualifications, functions, or duties of a physician and surgeon.

17 “(f) Any action or conduct which would have warranted the denial of a certificate.

18 “(g) The practice of medicine from this state into another state or country without meeting  
19 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not  
20 apply to this subdivision. This subdivision shall become operative upon the implementation of  
21 the proposed registration program described in Section 2052.5.

22 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and  
23 participate in an interview by the board. This subdivision shall only apply to a certificate holder  
24 who is the subject of an investigation by the board.”

25 6. Section 2266 of the Code states:

26 AThe failure of a physician and surgeon to maintain adequate and accurate records relating  
27 to the provision of services to their patients constitutes unprofessional conduct.

28 ///

1       7.     Section 726 of the Code states:

2       “The commission of any act of sexual abuse, misconduct, or relations with a patient, client,  
3 or customer constitutes unprofessional conduct and grounds for disciplinary action for any person  
4 licensed under this division, under any initiative act referred to in this division and under Chapter  
5 17 (commencing with Section 9000) of Division 3.

6       “This section shall not apply to sexual contact between a physician and surgeon and his or  
7 her spouse or person in an equivalent domestic relationship when that physician and surgeon  
8 provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person  
9 in an equivalent domestic relationship.”

10                               **FIRST CAUSE FOR DISCIPLINE**

11                               **[B&P Code Section 726]**

12                               **(Sexual Misconduct)**

13       8.     Respondent is subject to disciplinary action under section 726 of the Code in that he  
14 committed sexual misconduct with patient K.L. The circumstances are as follows:

15       9.     Respondent was patient K.L.’s obstetrician and gynecologist. He treated her for  
16 various feminine health issues including pregnancy.

17       10.    On or about January 14, 2016, K.L. presented with complaints of severe migraines,  
18 heavy menses, pain in her right breast and needed hormone replacement therapy. At the  
19 conclusion of the physical examination, and after a chaperone had left the room, Respondent took  
20 both of patient K.L.’s hands in his and kissed her on the lips.

21       11.    Respondent’s acts and/or omissions as set forth in paragraphs 9 through 10, inclusive  
22 above, whether proven individually, jointly, or in any combination thereof, constitute sexual  
23 misconduct pursuant to section 726 of the Code. Therefore, cause for discipline exists.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **[B&P Code Section 2234, subd. (d)]**

3 **(Incompetence)**

4 12. Respondent is subject to disciplinary action under section 2234, subdivision (d), of  
5 the Code in that he demonstrated a lack of medical knowledge of the proper treatment of  
6 menopausal conditions.

7 13. The facts and circumstances are as set forth in paragraphs 9 through 10 above, and are  
8 incorporated here by reference.

9 14. Hormone replacement is a means of replacing insufficient hormone levels as  
10 determined by history or laboratory analysis. At menopause, a woman experiences decreased  
11 levels of estrogen and progesterone due to ovarian failure. Standard of care for menopausal  
12 symptoms begins with consideration of Estrogen levels.

13 15. On or about October 21, 2015, Patient K.L. presented with menopausal symptoms.  
14 On or about October 21, 2015, Respondent prescribed Progesterone and dehydroepiandrosterone  
15 ("DHEA") for patient K.L.'s menopausal symptoms. On or about January 14, 2016, Respondent  
16 prescribed Progesterone and vitamin B12.

17 16. Progesterone, as prescribed, can be an effective treatment for the dysfunctional uterine  
18 bleeding patient K.L. experienced after her endometrial ablation<sup>1</sup> in 2013. The patient reported  
19 that the treatment plan was not effective for her continued menopausal symptoms. B12 therapy,  
20 for low energy or dysphoria,<sup>2</sup> remains controversial in that its efficacy has not been established.  
21 The value of DHEA therapy has not been proven. The logic behind this treatment plan, as  
22 implemented, cannot be evaluated due to a complete lack of documentation. There is no mention  
23 of Estrogen in patient K.L.'s medical records as a treatment option or of having evaluated the  
24 patient's estrogen status.

25 ///

26 \_\_\_\_\_  
27 <sup>1</sup> Endometrial ablation is a procedure that destroys the uterine lining, or endometrium.  
This procedure is used to treat abnormal uterine bleeding.

28 <sup>2</sup> Dysphoria is the state of unease or generalized dissatisfaction with life.

17. In addition, Respondent failed to document patient K.L.'s subjective complaints, bleeding history, symptoms, objective findings, relevant treatment plans, and options given to her to treat her menopausal symptoms.

18. Respondent's acts and/or omissions as set forth in paragraphs 13 through 17, inclusive above, whether proven individually, jointly, or in any combination thereof, constitute incompetence pursuant to section 2234, subdivision (d), of the Code. Therefore, cause for discipline exists.

### **THIRD CAUSE FOR DISCIPLINE**

#### **[B&P Code Section 2234, subd. (c)]**

#### **(Repeated Negligent Acts)**

19. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code in that he engaged in repeated negligent acts in his care and treatment of patient K.L.

20. The facts and circumstances are as set forth in paragraphs 9 through 10 and 14 through 17 above, and are incorporated here by reference.

21. Inappropriately kissing patient K.L. is a simple departure from the standard of care. The failure to document patient K.L.'s symptoms, objective findings, relevant treatment plans, and options given to her to treat her menopausal symptoms is also a simple departure from the standard of care.

22. Respondent's acts and/or omissions as set forth in paragraphs 20 through 21, inclusive above, whether proven individually, jointly, or in any combination thereof, constitute repeated negligent acts pursuant to section 2234, subdivision (c), of the Code. Therefore, cause for discipline exists.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **[B&P Code Section 2266]**

3 **(Failure to Maintain Adequate Records)**

4 23. Respondent is subject to disciplinary action under section 2266 of the Code in that he  
5 failed to maintain adequate and accurate records relating to the provision of services to patient  
6 K.L. The circumstances are as follows:

7 24. The facts and circumstances are as set forth in paragraphs 9 through 10, 14 through  
8 17, and 21 above, and are incorporated here by reference.

9 25. Respondent's acts and/or omissions as set forth in paragraph 24, inclusive above,  
10 whether proven individually, jointly, or in any combination thereof, constitute inadequate record  
11 keeping pursuant to section 2266 of the Code. Therefore, cause for discipline exists.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 **[B&P Code Section 2234]**

14 **(Unprofessional Conduct)**

15 26. Respondent is subject to disciplinary action under section 2234 of the Code for  
16 unprofessional conduct. The circumstances are as follows:

17 27. The facts and circumstances are as set forth in paragraphs 8 through 25 above, and are  
18 incorporated by reference.

19 28. Respondent's acts and/or omissions as set forth in paragraph 27, inclusive above,  
20 whether proven individually, jointly, or in any combination thereof, constitute unprofessional  
21 conduct pursuant to section 2234 of the Code. Therefore, cause for discipline exists.

22 **PRAYER**

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
24 and that following the hearing, the Medical Board of California issue a decision:

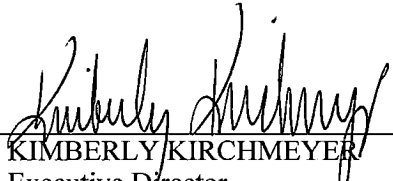
25 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 25834,  
26 issued to Respondent Gerald David Ebner, M.D.;

27 2. Revoking, suspending or denying approval of Respondent Gerald David Ebner,  
28 M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

1           3.     Ordering Respondent Gerald David Ebner, M.D., if placed on probation, to pay the  
2 Board the costs of probation monitoring; and

3           4.     Taking such other and further action as deemed necessary and proper.  
4  
5

6  
7 DATED: February 28, 2017

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
*Complainant*

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